

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DAVES, et al.,) **Case No. 3:18-cv-00154-N**
)
Plaintiffs,) Dallas, Texas
) July 27, 2018
v.) 11:00 a.m.
)
DALLAS COUNTY, TEXAS,) MOTIONS TO QUASH
et al.,) MOTION FOR PROTECTIVE ORDER
) MOTION FOR DISCOVERY
Defendants.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID L. HORAN,
UNITED STATES MAGISTRATE JUDGE.

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1 DALLAS, TEXAS - JULY 27, 2018 - 11:06 A.M.

2 THE COURT: All right. Well, good morning. This is
3 Judge Horan.

4 MR. HARLAN: Good morning, Judge.

5 THE COURT: All right. Of course, I'll say for the
6 record we're here for oral argument on the various pending
7 motions related to the Plaintiffs' request for limited
8 discovery in advance of the preliminary injunction hearing to
9 take place before Judge Godbey in this case, Case No. 3:18-cv-
10 154-N.

11 I think that Ms. Todd has just taken roll, but I guess,
12 just to make sure it's here on the record, why don't I ask you
13 all to make your appearances, starting with Plaintiffs?

14 MS. TRIGILIO: Trisha Trigilio and Elizabeth Rossi
15 for the Plaintiffs, Your Honor.

16 THE COURT: All right. Good morning.

17 MS. TRIGILIO: Good morning.

18 MR. HUDSON: Eric Hudson, Kelsey Warren, Dominique
19 Stafford on behalf of the District Court Judges.

20 THE COURT: Good morning.

21 MR. HUDSON: Good morning, Your Honor.

22 MR. MORGAN: Good morning. Good morning, Your Honor.
23 Phil Morgan and Peter Harlan for Dallas County, the
24 Magistrates, and the Dallas County Criminal Judges.

25 THE COURT: All right. Good morning. All right.

1 Well, let me say first I appreciate the unanimous proposal
2 that we do this by telephone. I do think that is -- this is
3 going to be the most efficient. I have carefully reviewed
4 everything that's been filed. I guess I could go through and
5 enumerate the motions, but hopefully you all could just take
6 me at my word that I think I've covered everything that's on
7 the docket, beginning with the Plaintiffs' motion for --
8 seeking leave for limited discovery and then the -- I guess
9 the Defendants' various motions for protective order and the
10 individual defendants as well as Dallas County's motion to
11 quash. Or I guess each of the individual defendants'. As
12 well as, most recently, the most recent filing being the
13 Plaintiffs' reply for their motion for leave to seek limited
14 discovery filed yesterday in response to the Felony Judges'
15 motion for protective order and motion to quash.

16 So I really, I don't think it would be efficient or make
17 much sense for anyone to repeat anything that's in those
18 motions or response papers or replies. I really have reviewed
19 all that and tried to digest it. But if there's anything new
20 that's come up or any additional points that anyone wanted to
21 make before I, you know, make a decision and let you all know
22 my ruling on these matters, I'm happy to hear from you.

23 MR. HARLAN: Good morning, Your Honor.

24 MS. TRIGILIO: Good morning, Your Honor.

25 THE COURT: Well, --

1 MS. TRIGILIO: Your Honor, this is Trisha Trigilio.
2 One issue we would highlight that was not in our initial
3 moving papers but showed up in our reply yesterday is our
4 request for production of a limited amount of videos of
5 magistrations from January and then from July. The Defendants
6 raised a question about whether they'd be complying with that
7 request in their opposition papers, and so we prefer to
8 address that today, just to iron out any issues that are going
9 to come up.

10 THE COURT: Well, isn't that necessarily within the
11 scope of your request for limited discovery? I mean, you
12 don't have the right to seek -- I mean, to serve requests for
13 production or document subpoenas prior to a 26(f) conference
14 any more than you do the depositions. I mean, I -- well, I
15 mean, let me back up, Ms. Trigilio. I did intend to address
16 that today, but I guess I just wanted to make sure that I
17 thought -- I would have thought that that was within the scope
18 of all of this in any event because it would -- you would need
19 to make a showing of good cause for that, to have
20 authorization to seek those documents anyways, unless I'm
21 missing something.

22 MS. TRIGILIO: Thank you, Your Honor.

23 THE COURT: I mean, do you disagree with that, or --

24 MS. TRIGILIO: Oh. No, Your Honor. That's
25 absolutely correct. We just wanted to make sure, since it

1 wasn't really a purpose of the initial motion, or frankly, of
2 the oppositions, that that was something that you're going to
3 address. But it sounds like you are.

4 THE COURT: Okay. Very good. Mr. Morgan or Mr.
5 Hudson on behalf of the Defendants?

6 MR. HUDSON: Yes. This is Eric Hudson, Your Honor.
7 We'll stand on our papers, in line with the Court's
8 representation that it's aware of everything. We're not aware
9 of anything new aside from what's been previously filed.

10 THE COURT: Okay.

11 MR. MORGAN: Your Honor, Phil Morgan for Dallas
12 County Defendants. We'll stand on our papers as well.

13 THE COURT: Okay. All right. Well, let me start
14 first with the request for -- well, again, like I say, I mean,
15 I think the limited discovery that the Plaintiffs are asking
16 for leave to conduct in advance of the preliminary injunction
17 hearing is some number of depositions and also the document -- well,
18 the requests for production specifically of videos or audio
19 recording of certain bail hearings.

20 Let me take up the request for leave to conduct
21 depositions first. I -- well, the way it appears to me that
22 things stand with you all now is that Defendants are no longer
23 opposing the possibility of -- well, let me back up. So, this
24 Monday, July 30th, is when Defendants, under Judge Godbey's
25 scheduling order, will file their declarations. Judge Godbey

1 has provided that any declarants, both Plaintiffs and the
2 Defendants' declarants, will appear live at the hearing to --
3 at the -- in August and be subject to cross-examination, and
4 also the Plaintiffs will have the opportunity for reply
5 declarations in advance of that. And, of course, any of those
6 reply declarants or rebuttal declarants would also be
7 available for cross-examination -- need to appear for cross-
8 examination at the hearing.

9 And as I understand it, that's the way that Judge Godbey
10 intended to conduct the preliminary injunction hearing.
11 There's various ways a district judge can choose to hold a
12 preliminary injunction hearing, but this is -- seems -- it
13 seems to be the way that he thought would make the most sense
14 and be the most efficient here.

15 So, as of Monday, anyways, three days from now, Plaintiffs
16 will know who the declarants are who will be available for
17 cross-examination on behalf of the Defendants come the
18 preliminary injunction hearing.

19 Unless I'm mistaken, but the most recent filings by all
20 parties seem to suggest that, whatever disagreement there may
21 have been, that Defendants are not opposing the possibility of
22 Plaintiffs subpoenaing any additional Dallas County
23 representative, or, I'm sorry, or representatives of the
24 various defendants or employees as adverse witnesses beyond
25 the declarants, but, you know, are -- have suggested that that

1 lack of opposition is subject to Plaintiffs seeking permission
2 from Judge Godbey to call, you know, for leave to call adverse
3 witnesses beyond the declarants. You know, in essence, for
4 Judge Godbey to slightly modify the way that his order setting
5 the preliminary injunction hearing is set out, the process for
6 that hearing.

7 Do I have that part right?

8 MR. MORGAN: Your Honor, this is Phil Morgan for
9 Dallas County, and I think that's a correct representation of
10 our position. We're not sure if it's appropriate, but if
11 Judge Godbey obviously said that live adverse witnesses were
12 intended or allowed, we wouldn't oppose that.

13 THE COURT: Okay.

14 MS. TRIGILIO: Trisha Trigilio, Your Honor. Your
15 Honor's description of the parties' positions seems correct to
16 us, although we would add, I'm sure (inaudible), that deposing
17 these witnesses in advance might obviate the need to subpoena
18 anyone for the hearing at all, as well as seeking these
19 depositions.

20 THE COURT: Okay. Well, so that takes me to that.
21 And I understand. I understand that that's why Plaintiffs
22 have claimed that they're seeking these depositions and
23 explained that they hoped this would be more cost-effective or
24 efficient for everyone than seeking that leave from Judge
25 Godbey and having adverse witnesses need to be subpoenaed to

1 the hearing.

2 After considering everything, though, and considering the
3 way that Judge Godbey has set up the preliminary injunction
4 hearing, I just cannot find good cause to allow the
5 depositions. I understand the Plaintiffs' position and the
6 reason that Plaintiffs are saying that they want to take these
7 depositions in advance, but while I don't -- it just seems to
8 me that, in some sense, you know, having this, you know,
9 rounds of these five, maybe eight, maybe ten, however many
10 depositions in advance, with, you know, a real question, it
11 seems to me, as to whether any of those deponents might still
12 not -- or whoever is their employer or to whomever they're a
13 representative, may still feel the need for those deponents to
14 be there at the hearing and possibly seek live testimony from
15 them as well, in addition to the costs that are just involved
16 in trying to arrange and run depositions over the next few
17 weeks, or really just next week, in advance of the hearing, I
18 just don't find good cause for the depositions that Plaintiffs
19 are asking for.

20 If the declarants that Defendants present next Monday and
21 will present at the hearing, you know, don't include some
22 officials the Plaintiffs feel should testify, I don't know how
23 Judge Godbey will respond to it, but I think, you know,
24 without opposition from Defendants at this point, the
25 Plaintiffs can ask Judge Godbey for permission to present them

1 and then seek to subpoena them. But otherwise, under all the
2 circumstances, where Judge Godbey has chosen to proceed with
3 declarations and then cross-examination at the hearing, not an
4 expedited discovery period, in his initial order, I don't find
5 good cause under all these circumstances to, within this
6 context, authorize that discovery.

7 I think the purpose of obtaining these witnesses'
8 testimony at the hearing can best and most efficiently be
9 achieved, to the extent it's even necessary, through cross-
10 examination of the declarants that the Court is already
11 permitting, and if Judge Godbey will permit it, and
12 presentation of live testimony of whatever few adverse
13 witnesses Plaintiffs may feel the need to put up and call by
14 subpoena.

15 But, in short, I'm just not persuaded that commencing a
16 short period of some amount of depositions will be more cost-
17 efficient than asking the Court to allow any live testimony
18 that may be needed beyond the declarants or that the reasons
19 that Plaintiffs have offered justify the costs and other I
20 think inefficiencies that would be involved in that.

21 That said, with regard to the request for some limited
22 discovery by way of requests for production, I do, after
23 considering, as everyone has pointed out, slightly less
24 lengthy briefing on that, but nevertheless the briefing on the
25 requests, I do think that, in advance of the hearing and for

1 purposes of allowing Plaintiffs additional what seems to be
2 material information to be prepared for the hearing, as well
3 as prepare for cross-examination of any of the Defendants'
4 declarants, I do think there's good cause to allow limited in
5 essence document discovery or requests for production to the
6 appropriate defendant for audio and video recordings of bail
7 hearings for -- it seems to me, I mean, considering all the
8 circumstances here and what would be most proportionate to the
9 needs of the case and the needs of the Plaintiffs in
10 presenting evidence or being prepared, and being prepared to
11 put on testimony of and evidence and make argument regarding
12 any disputed fact issues at the preliminary injunction
13 hearing, that I think audio and video recordings that may be
14 available for some three-day period between July 1st and July
15 18th -- I'm sorry, July 1st and July 8th, 2018, as Defendants
16 -- as one of the Defendants' briefs noted in a footnote, I
17 think is appropriate. I think there is good cause for that.
18 If -- I think, if Defendants can manage it, it ought to be
19 produced by -- make every effort to produce it by next
20 Thursday, August 2nd. And if they do, in fact, as they appear
21 they might, run into any technical difficulties with
22 extracting that or finding some way to produce it, then that's
23 something that they can raise in the first instance with
24 Plaintiffs' counsel. And if you all need to, you know, get
25 back on the phone with me next week to talk about that, then

1 we can do that.

2 But, so in the end, though, my -- considering everything,
3 consistent with what I've said, I intend to grant in part and
4 deny in part Plaintiffs' motion for limited discovery and the
5 Defendants' respective motions for protection, deny any
6 alternative motions for continuance, deny leave, as I said,
7 for any depositions and quash the subpoenas, but permit
8 Plaintiffs to serve the appropriate Defendant or Defendants
9 with requests for production for video and audio recordings of
10 bail hearings during some three-day period between July 1st
11 and July 8th, 2018, to be produced, if at all possible, by
12 next Thursday, August 2nd, 2018. Does that make sense to
13 everyone?

14 MS. TRIGILIO: This is --

15 MR. HARLAN: Your Honor, let me ask for a little
16 clarification, if I may.

17 THE COURT: Sure.

18 MR. HARLAN: This is Peter Harlan with --

19 THE COURT: Yes.

20 MR. HARLAN: -- the Dallas County District Attorney's
21 Office. Are you saying for any three-day period between the
22 periods of July 3rd through July 18th, 2018?

23 THE COURT: No, actually, I'm sorry, I said -- I
24 really -- and I may have misspoken. I said July -- I actually
25 meant July 1st through the 8th, as you all had proposed.

1 MR. HARLAN: 1st through the 8th?

2 THE COURT: 1st through 8th.

3 MR. HARLAN: Okay.

4 THE COURT: And I don't know -- and I don't mean -- I
5 mean, I suspect -- look, I don't know. I mean, we -- we don't
6 hold court on July 4th. I suspect there may be magistrate
7 judges in the basement over there who sometimes have to, but
8 not July 4th is probably the best day for that. But, and so
9 it doesn't have to be in consecutive days. I just think, you
10 know, essentially three days' worth of recordings, audio and
11 video, that you have of bail hearings during that seven-day
12 period is appropriate.

13 MR. HARLAN: Okay. Thank you.

14 MS. TRIGILIO: And Your Honor, this is Trisha
15 Trigilio. So, to the time period of the video specifically, I
16 think that the two periods that we have requested were for
17 very different purposes. Because we're seeking injunctive
18 relief, the relevant time period for the recordings will be
19 immediately preceding when we filed this case, which would be
20 January. That's really the critical videos we were looking
21 for.

22 Defendants have (inaudible) that they've changed their
23 practices since then, and so we also requested videos from
24 July just as a comparison to inform ourselves. But, really,
25 the relevant evidence that we are looking for is from January,

1 not July, because those are the only practices that are
2 factually going to be at issue in the hearing.

3 MR. MORGAN: Your Honor, this is Phil Morgan for the
4 Dallas County Defendants. The question of the hearing is
5 whether injunctive relief is necessary. The question of the
6 hearing is whether the practices today warrant injunctive
7 relief. If they don't, then there's no need for a preliminary
8 injunction. So we think the videos from July would be most
9 appropriate.

10 THE COURT: Yeah. Ms. Trigilio, I guess I'm confused
11 by that. I mean, this is, of course, a question of whether
12 there ought to be a preliminary injunction to do something to
13 alter or, I mean, some sort of enjoining of something that the
14 Defendants are doing going forward while this case is in
15 place. Why wouldn't what's happening right now be as or more
16 relevant than what was happening six months ago?

17 MS. TRIGILIO: Well, Your Honor, the argument that
18 the Defendants are making is that, among others, that they've
19 mooted this case through a voluntary cessation of the conduct
20 that the Plaintiffs have challenged. But, of course, that's
21 an exception to the mootness doctrine, unless the change is
22 sufficiently permanent, which calls for something like a
23 change in statute or ordinance.

24 So, really, the relevant conduct here is what they were
25 doing before they were looking down the barrel of a lawsuit,

1 which is going to be exactly what was happening in January.
2 What they've changed voluntarily as the lawsuit is pending
3 might be relevant to whether or not the parties are likely to
4 settle, but it's not relevant to whether or not Plaintiffs are
5 entitled to relief from the system as it was operating in mid-
6 January, before the lawsuit was filed. And --

7 MR. MORGAN: And Your Honor, --

8 MS. TRIGILIO: And this is -- this is, just to
9 clarify, you know, probably the way that the question should
10 be resolved is it's a legal question that we briefed that
11 Judge Godbey should be taking up at the hearing and upon
12 review of our papers. And having a set of videos from both
13 time periods would enable him to make the right decision just
14 depending on how he resolves this legal question.

15 MR. MORGAN: Your Honor, this is Phil Morgan again.
16 I don't really have much to add to that other than I think the
17 Court is correct that we're talking about a preliminary
18 injunction hearing. The question is what is going on today,
19 and limited production in the next few weeks of three days of
20 videos is more than sufficient at this point. If the parties
21 want to debate further, you know, on the merits of this case,
22 that, you know, what's happening isn't sufficient, that's
23 fine, but I don't -- I think the Court is correct and I don't
24 understand what, you know, was happening January 21 to be
25 particularly informative as to what is happening today for a

1 preliminary injunction.

2 MS. TRIGILIO: And this is Ms. Trigilio again. Just
3 to be clear, Your Honor, we'd accept even two days from
4 January.

5 Really, what we're looking for is a small, representative
6 sample of what the standing operating -- standard operating
7 procedure was before the Defendants were facing a lawsuit over
8 this conduct.

9 And, really, the reason that we're pushing this so hard is
10 that the Defendants have indicated that the videos from
11 January are, in fact, missing, and if that's true, that's
12 something that we need to bring out, figure out why it
13 happened, address whether this is an ongoing issue of videos
14 being lost or erased, and make sure that it doesn't happen
15 again.

16 MR. MORGAN: Your Honor, that's a -- this is Phil
17 Morgan for Dallas County. I mean, that's a spoliation issue
18 that they seem to be trying to tee up at a preliminary
19 injunction to get some sort of adverse inference as to what
20 was happening before a lawsuit was even filed and the need to
21 preserve the videos even arose.

22 Again, I think, with the two weeks that we have, the
23 questions presented at the preliminary injunction, the three
24 days of videos recorded suggested from July are more than
25 sufficient for the parties to do that.

1 In addition, Your Honor, we will be submitting
2 declarations from people who were present and, you know, for
3 the system as it existed the day the lawsuit was filed. If
4 Plaintiffs have questions, there will be witnesses available
5 to question them about as well.

6 THE COURT: Ms. Trigilio, I still think that July --
7 I still think that, if there's going to be any production of
8 audio and video recording, that the production of the audio
9 and video recordings from, you know, just several weeks ago is
10 -- makes sense, and that is all I'm going to order.

11 MS. TRIGILIO: And Your Honor, --

12 MR. HARLAN: Your Honor, just to make clear, Your
13 Honor, --

14 MS. TRIGILIO: To be clear for the record, Your
15 Honor, our understanding from the Defendants' representations
16 is that the hearings happening right now in July are quite
17 different than the hearings that were happening in January.
18 And the only questions relevant to whether we get the
19 injunction granted are what was happening at the hearings in
20 January, not July. Because, again, voluntary changes that the
21 Defendants have made that they can undo as soon as the
22 lawsuits have been dismissed are irrelevant to our standing to
23 seek relief and the merits of our claim.

24 THE COURT: Well, that's a permanent injunction, not
25 a preliminary injunction. A preliminary junction is what's

1 going on while -- will only be in place while the lawsuit is
2 going on.

3 MS. TRIGILIO: And, I mean, Your Honor, that -- be
4 that as it may, to put the Plaintiffs in the position of
5 denying a preliminary injunction and then having to monitor
6 every day what Dallas County is doing to make sure that we
7 don't need to file a new preliminary injunction motion, while
8 we're, at the same time, litigating this case, seems like an
9 inefficient way to examine the question.

10 The parties to this case, the Plaintiffs' counsel and the
11 policymakers for Dallas County were in conversations for many
12 months about this system before the lawsuit was filed, and
13 through their behavior they made it clear that, without the
14 force of a court order or the threat of a court order, that
15 they weren't going to voluntarily change the system.

16 And so, without a preliminary injunction in place, we
17 think it's likely that they would revert to their old system
18 in a way that it would be hard for us to track and prove to
19 the Court by filing preliminary injunction motion after
20 preliminary injunction motion, upon which they could revert to
21 a -- change to a new system or change the system just enough
22 to defeat the motion.

23 Again, --

24 THE COURT: This is not your -- Ms. Trigilio, this is
25 not your --

1 MS. TRIGILIO: -- question for Judge Godbey to
2 resolve. And so at least getting the evidence before him in
3 the case that he does agree with the Plaintiffs would be much
4 more efficient so that he could make a decision in Plaintiffs'
5 favor if he chooses to do so.

6 THE COURT: Videos are not the only evidence you're
7 going to have of that, I would assume.

8 MS. TRIGILIO: That's correct, Your Honor, but they
9 are the best evidence.

10 THE COURT: Well, I still think, considering all the
11 circumstances -- I'm not saying that you're not going to be
12 able to argue what happened there at the preliminary
13 injunction. I'm certain that you will. And from your -- your
14 evidence already covers that, and it sounds like the
15 Defendants' evidence will as well. So I think, in terms of
16 the recordings that you're asking for, obtaining the
17 recordings from three days in July is all that I find good
18 cause for at this point.

19 It's not in any way shutting you down from asking -- from
20 asking for the preliminary injunction -- I mean, bear in mind,
21 Judge Godbey didn't anticipate any discovery at all with the
22 way he set up the -- set up his preliminary injunction
23 hearing. So I -- but I think that the recordings that I've
24 ordered are all that I find good cause for.

25 MR. HARLAN: Thank you, Your Honor. Are we done now?

1 MS. TRIGILIO: Your Honor, just in light of that
2 ruling, to preserve any -- any videos from when this lawsuit
3 was filed that may still exist going forward, we'd like a
4 commitment from the Defendants that, you know, just in case of
5 when the time comes appropriate to request production of those
6 videos, that they're actually going to be preserved. Because
7 it seems that there are serious questions raised about whether
8 Defendants are actually preserving videos from the time the
9 lawsuit was filed.

10 MR. MORGAN: Your Honor, this is Phil Morgan for
11 Dallas County. I don't think that that question or assurances
12 are really appropriate or necessary at this time. I think it
13 should suffice to say we are -- we take our discovery
14 obligations under the Federal Rules seriously, and literally,
15 we're -- we are complying with what the Federal Rules require.

16 MS. TRIGILIO: And Your Honor, this is Trisha
17 Trigilio. What I've heard, they're -- I just really want to
18 clarify, because I heard initially that that commitment
19 wouldn't be made, and then, secondarily, that of course
20 Defendants are minding their obligations under the Rules. Of
21 course, their obligations under the Rules are to preserve any
22 evidence that's relevant to the lawsuit from the day it was
23 filed, which is back in January, and those obligations have
24 been ongoing, yet there are questions about whether videos
25 were lost or destroyed after the lawsuit was filed.

1 That's a really significant problem for us, because as I
2 said, this is the best evidence of what happened at those
3 hearings, their video and audio recordings of the hearings.
4 And so to hear hedging in a response to a request for a
5 commitment that this is not an issue is really troubling.

6 MR. MORGAN: Your Honor, this is Phil Morgan for
7 Dallas County. I don't -- I don't think I hedged. Again, I
8 would like to stand by our position that we will -- we take
9 seriously our obligations under the Federal Rules. We're
10 doing what we're supposed to do. And at a later point, the
11 parties can -- at a later and appropriate point, if necessary,
12 the parties can re-examine this issue about what evidence we
13 have or don't have.

14 To clarify the conversation I had with Plaintiffs'
15 counsel, I mean, we are just in the process of determining,
16 you know, what we have. I didn't -- never represented we
17 don't have it or we do have it. I mean, we're -- we're in
18 that process now. So I don't know what else to say from
19 Dallas County's perspective about the videos.

20 THE COURT: Okay. Well, I mean, Mr. Morgan, I guess
21 I'll just say it does -- without knowing more, it does sound
22 like audio and video recordings of bail hearings, you know,
23 are likely to be relevant evidence, even if I'm not ordering
24 them under the, you know, restricted expedited discovery good-
25 cause standards here.

1 So, you know, I would think that certainly looking into
2 what you have and preserving what you have would be in Dallas
3 County's best interest going forward.

4 MR. MORGAN: Your Honor, Phil Morgan for Dallas
5 County. We completely agree.

6 THE COURT: Okay. All right. Mr. Trigilio, anything
7 else, then, for the Plaintiffs today?

8 MS. TRIGILIO: Yes, Your Honor. Just for
9 efficiency's sake, I think Your Honor laid out the parties'
10 position fairly well, but just to put a point on it, if
11 Plaintiff files subpoenas for adverse witnesses who are not
12 declarants after Dallas County files its evidence on Monday,
13 that the Defendants are not going to be opposing those
14 subpoenas; is that correct?

15 THE COURT: That's my understanding, although the
16 expectation -- it's the expectation I have as well -- is I'm
17 not -- Judge Godbey has referred to me these discovery motions
18 and any discovery disputes. I don't have the -- how he's
19 going to conduct the preliminary injunction hearing, what he's
20 going to allow there and how he's going to have it structured
21 is entirely his purview and his province and not anything that
22 I'm trying to get out in front of him on.

23 So I think the expectation is that you all -- if you feel
24 you are going to need -- want adverse witnesses and to
25 subpoena them, that you will be filing a motion with Judge

1 Godbey to get, you know, permission for those to be presented.
2 Subject to that, my understanding is the Defendants are not
3 opposing subpoenas to any adverse witnesses within their
4 control to be presented, if Judge Godbey will actually allow
5 such testimony.

6 Is that correct on my part with regard to the Defendants'
7 position?

8 MR. MORGAN: Your Honor, Phil Morgan for Dallas
9 County. That's correct.

10 MS. TRIGILIO: Excellent, Your Honor. This is Trisha
11 Trigilio. Can we get a commitment from the Felony Judges as
12 well, who are represented by other counsel?

13 MR. HUDSON: At this time, Your Honor, I don't
14 believe that we actually took a position in our papers on
15 whether we would agree to a subpoena at this point. Dallas
16 County, I believe, is going to have the most relevant actors.
17 And since Judge Godbey has limited the hearing to a three-hour
18 period, we would prefer to see the motion that the Plaintiffs
19 intend to file before we take a position on whether we would
20 agree to a subpoena.

21 THE COURT: Okay. Well, let me just say, just to
22 make clear, I did not -- my ruling on whether depositions are
23 appropriate, you know, was -- did not assume -- does not
24 assume whether Judge Godbey will even grant that motion or
25 not.

1 So, you know, part of the circumstances, overall
2 circumstances I considered was the Dallas County Defendants,
3 my understanding is they're -- I understand that they, under
4 the circumstance I've already laid out, would not oppose
5 subpoenas. The fact that the Dallas County District Judges
6 are not taking a position one way or the other at this point
7 does not alter my ultimate ruling.

8 MR. HUDSON: Thank you, Your Honor.

9 MR. HARLAN: Thank you, Your Honor.

10 THE COURT: Ms. Trigilio, anything further for today
11 for Plaintiffs?

12 MS. TRIGILIO: Nothing for the Plaintiffs, Your
13 Honor. Thank you.

14 THE COURT: All right. Thank you. Well, I'll issue
15 a short electronic order that memorializes the essence of or
16 the most salient points of what I've just said and the rules
17 on the motions and we'll go from there.

18 As I had said, if issues come up with regard to Dallas
19 County's ability to produce the audio and video recordings for
20 over the course of three days during that eight-day period, I
21 guess, actually, in July 2018, I'll ask that you all confer on
22 that and try and do what you can to resolve it, but if you do
23 need the Court's intervention, please do feel free to actually
24 just reach out to -- call chambers. And it may be most
25 efficient, at least in the first instance, just to get

1 everyone on the phone and talk about it next week. Okay?

2 MR. HARLAN: Okay. Thank you, Your Honor.

3 MS. TRIGILIO: Thank you, Your Honor.

4 THE COURT: All right.

5 MR. MORGAN: Thank you, Your Honor.

6 THE COURT: All right. Thank you all. Have a good
7 rest of the day. We'll be adjourned.

8 (Proceedings concluded at 11:37 a.m.)

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CERTIFICATE

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I certify that the foregoing is a correct transcript to
the best of my ability from the electronic sound recording of
the proceedings in the above-entitled matter.

22

/s/ Kathy Rehling

12/27/2019

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Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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